

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

In Re:

John Edward Phillips

Debtor.

**Case No. 14-12055-NLJ
Chapter 13**

**MOTION TO DISMISS FOR NONFEASIBILITY
COMBINED WITH BRIEF IN SUPPORT
AND NOTICE OF OPPORTUNITY FOR HEARING**

COMES NOW, John Hardeman, Chapter 13 Trustee ("Trustee"), and files his Motion to Dismiss the above-styled Chapter 13 case pursuant to the provisions of 11 U.S.C. Sections 1307(c) and 1322(d). In support of his Motion, the Trustee would show the Court the following:

1) This bankruptcy case was filed under Chapter 13 on May 14, 2014, and a plan was confirmed by this Court on September 19, 2014. WELLS FARGO has filed a claim in an amount greater than was scheduled. The payment of the referenced claim as filed would result in a plan term of 103 months.

2) Section 1322(d) of the Bankruptcy Code provides that a Chapter 13 plan may not exceed a term of 5 years. Section 1307(c) provides a Chapter 13 case may be dismissed for cause. While "cause" is not a term specifically defined in the Bankruptcy Code, "cause" has been generally interpreted as allowing bankruptcy courts to exercise broad discretion. Certainly, the violation of a specific provision of the Bankruptcy Code provides cause for dismissal.

3) The filing of the referenced claim by WELLS FARGO, to which no objection has been filed, results in a plan term in excess of 5 years in violation of Section 1322(d). As a result, dismissal is warranted.

WHEREFORE, the Chapter 13 Trustee requests the Court dismiss this Chapter 13 case pursuant to the provisions of 11 U.S.C. Sections 1307(c) and 1322(d).

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102, no later than 14 days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant [and others who are required to be served] and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

The 14 day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

Respectfully submitted,

s/John Hardeman

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CERTIFICATE OF MAILING

This is to certify that on October 20, 2014, a true and correct copy of the foregoing document was served by U.S. Mail, first class, postage prepaid, on the following:

John Edward Phillips
2112 NW 38th Street
Oklahoma City, OK 73112

s/John Hardeman

John Hardeman, Trustee

kaw